

**MINUTES**  
**Florida Board of Auctioneers Meeting**  
**Conference Call Meeting**  
**1940 North Monroe Street**  
**Tallahassee, FL**  
**March 9, 2004, 10:00 a.m.**

**CALL TO ORDER**

Chairman Fred Dietrich called the meeting to order at 10:04 a.m. and a quorum was established.

**ROLL CALL**

The following members were present

Fred Dietrich, Chairman  
Michael Moecker, Vice-Chairman  
Annette Elms, Board Member  
Craig Accardo, Board Member  
Jody Hill, Board Member  
Julie Malone, DBPR, Executive Director  
Donna Salters Thomas, DBPR, Government Analyst  
Mary Ellen Clark, Assistant General Counsel  
Brian Higgins, DBPR, Prosecuting Attorney  
Charles Pellegrini, DBPR, Prosecuting Attorney

**Others Present**

Eric Rubin, Applicant  
Cassidy Truesdale, Applicant  
Douglas Holladay, Applicant  
Mark Wagner, Applicant  
Wade Clark, Applicant  
Victor Allen King, Applicant  
John Hill, JW Hill & Associates  
Eric Gifford, Attorney  
Brenda Leonard, Interested Party  
Sheri Melchione, Interested Party

**Approval of Minutes**

The minutes from the December 5, 2004 meeting were approved with the following corrections: Michael Moecker and Jodi Hill both were excused absences.

**Discipline**

Motion for default and final order for A & E Auction was pulled from the agenda.

**Consideration of Applications with Criminal History**

The Board reviewed Chad Clark, application #2827. Mr. Clark was sworn in and addressed the Board concerning criminal history disclosed on his application. It was noted that Mr. Clark has a felony offense, which resulted in the loss of his civil rights. Ms. Clark referenced Florida Statutes 112.011 regarding eligibility for license if civil rights have not been restored. Mr. Clark waived his right of the ninety- (90) day completion of application rule and he must provide proof of restoration of civil rights by the June 15, 2004 conference call meeting. Mr. Moecker motioned to withdraw this application until such documents are provided. The motion was seconded by Jodi Hill and passed unanimously.

Douglas Holladay, application #2785 was sworn in and addressed the Board regarding the criminal history disclosed on his application. Mr. Moecker made a motion to accept this application. The motion was seconded by Ms. Hill and passed unanimously.

Victor Allen King, application # 2816 was sworn in and addressed the Board regarding the criminal history disclosed on his application. Mr. Moecker made a motion to accept this application. The motion was seconded by Ms. Hill and passed unanimously.

Eric Rubin, application # 2690 was sworn in and addressed the Board regarding the criminal history disclosed on his application. Mr. Moecker recused himself, as Mr. Rubin is an employee at his auction company. Ms. Hill made a motion to accept this application. Ms. Elms seconded it. The motion passed unanimously.

Cassidy Truesdale, application #2951. Ms. Truesdale & John Hill both were sworn in and addressed the Board concerning the criminal history disclosed on her application. Mr. Moecker motioned to accept the application. The motion was seconded by Ms. Hill and passed unanimously.

Mark Wagner, application #2790. Mr. Wagner was sworn in and addressed the Board concerning the criminal history disclosed on his application. He indicated that he holds AB license #2351. Mr. Moecker motioned to accept the application. It was seconded by Ms. Hill and passed unanimously.

#### **Ratification List**

Ms. Salters Thomas presented the ratification list for application by examination. There were 31 licenses issued. Mr. Moecker offered a motion to approve the licenses by examination. Ms. Hill seconded it and the motion passed unanimously.

There were 18 applications by endorsement presented. Ms. Hill offered a motion to approve licenses by endorsement. It was seconded by Mr. Moecker and passed unanimously.

There were 27 auction business applications presented. Ms. Hill motioned to approve licenses for auction businesses. It was seconded by Mr. Moecker and passed unanimously.

There was 1 application for auctioneer apprentice. Mr. Accardo motioned to approve the license. It was seconded by Ms. Elms and passed unanimously.

#### **Auctioneer Recovery Fund Claim**

Gilligan, King & Gifford, PA submitted a claim application for the auctioneer recovery fund against licensee Charlene Gray, AU #2690 and Janet Hobson. The claim was submitted on behalf of Alfonso & Mildred Martinez. Ms. Clark explained that the Board must establish whether the claim was properly filed. It was noted that civil action was filed July 20, 2001

Mr. Dietrich indicated that he was on the Board at the time that there were many mitigating circumstances in this case but he does not recall a claim against the recovery fund. Ms. Clark recommended that Mr. Gifford address the Board concerning the matter of a claim having been filed so that they may determine whether or not some additional time might be allowed to establish if the claim has come to terms.

Mr. Gifford addressed the Board stating that included in this agenda are documents that support the possibility of a claim having been filed against the recovery fund. He stated that there was another attorney handling this case and for reasons unknown is no longer licensed to practice in Florida. Although he was able to determine that a DBPR complaint had been filed, Mr. Gifford was unable to locate the claim application in the documents provided to him from the previous attorney. He stated that the complainant believed that a recovery claim had been filed at the same time of the complaint.

Ms. Clark suggested that the Board allow additional time for the complainant to provide evidence that a claim was filed and the only evidence that may be available is to submit an affidavit from the Martinez's. Mr. Moecker offered a motion that there be more time allowed for Mr. Gifford to substantiate the recovery fund claim. The motion was second by Ms. Hill and passed unanimously.

### **Executive Director's Report**

Ms. Malone reported that per Board request a letter was sent to Ms. Catherine Lannon, Office of the Attorney General on behalf of Mary Ellen Clark for her exemplary service to the Board of Auctioneers.

Ms. Malone also presented the December 2003 Financial Reports and a letter from Julie Baker, Deputy Secretary, regarding the legislative trust fund sweep that occurred in the 2003 Session. The General Appropriations Act included a mandate to transfer funds from the Profession Regulation Trust Fund to the Working Capital Fund.

### **Board Counsel Report**

Ms. Clark provided a report on Rule 61G2-2.0035, F.A.C. Exemption from Licensure Renewal Provision for spouses of members of the armed services. The rule was adopted on February 19, 2004 and should be affective some time later in March.

Ms. Clark further reported on Rule 61G2-.003, F.A.C, Examination Fee which is a reduction to the vendor and an increase to the department. The language was published in the Florida Administrative Weekly on February 6, 2004 to increase to the department the fee of \$241 from \$237 and decrease the exam fee to \$9.00 from \$13. She stated that JAPC will not have any objections to this change and the Rule should become affective later in March.

Ms. Clark reported on Rule 61G2-3.002. F.A.C. in regards to adding a \$47 fee for criminal history check on the application. She included in the agenda a letter from JAPC requesting more information on the legal authority of the Board in requesting this information from an applicant. Ms. Clark referenced 468.386 (1) and indicated that the fee for criminal background check is established in Rule 943.053 (3) (b), F.S. Ms. Clark stated that she has submitted an explanation letter back to JAPC.

Ms. Malone explained that if the Board allows this rule to go through and charge the fee, the FBI would not process the finger print card since the practice act contains no authority to conduct a background check. This would require a statutory change. Ms. Malone referenced Section 455.213(10), F.S. which states in part that "*for any professions requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, a fingerprint card containing the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal*

*history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record."*

Mr. Moecker made a motion to withdraw this rule for obtaining fingerprints to require a background check on applicants. Ms. Hill seconded it and the motion passed unanimously.

In addition, Ms. Hill further motioned for the Board to move forward with addressing the background check requirement with the legislature for the 2005 session. The motion was seconded by Mr. Moecker and passed unanimously.

Ms Clark reported that she had forwarded a letter to Mr. Jim Skeen of the Florida Auctioneer Academy regarding Section 112.011, F.S. The Board asked that Ms. Clark share information regarding ineligibility of licensure when civil rights have not been restored.

Ms. Clark stated that per her conversation with Mr. Dietrich regarding Internet auctions and the Department of State regarding their agreement with companies that are accepting goods for placement on eBay for a fee. If they abide in Florida and are accepting fees they should be licensed. The Department of State stated that they would prosecute cases for unlicensed activity.

Ms. Melchione addressed the Board asking that if someone who posts or uploads information on a site for a charity organization, does that constitute auctioning? Ms. Malone informed the Board that this does not and charitable organizations are exempt. Ms. Melchione stated that she could call eBay and have them place a special notice on their site for Floridians regarding the requirements to hold an auction.

Mr. Moecker made a motion that staff research producing a public service announcement to educate those who may be placing items on eBay for a fee on the need to hold an auctioneer license if they live or have a business in Florida. The motion was seconded by Ms. Hill and passed unanimously.

#### **Complaints & Investigation YTD 2003-2004**

There are 82 complaints and 60 were found legally sufficient. There were 47 complaints against licensees and 13 for unlicensed activity. There are thirty-two (32) cases under investigation, and 23 investigations that have been completed. Nineteen (19) cases have been assigned to mediation and 15 mediation cases have been completed. There were three (3) notices of non-compliance issued.

#### **Special Meeting**

There will be a special meeting held by telephone conference call on Monday, April 5, 2004, at 10:00 a.m. for discipline cases.

#### **Next Meeting**

Ms. Malone reminded the Board that two face-to-face meetings would be requested in the next fiscal year.

The next general meeting is scheduled for June 15, 2004, 10:00 a.m. by telephone conference call.

Mr. Moecker motioned that the meeting be adjourned, and it was seconded by Ms. Hill. The motion passed unanimously. The meeting was adjourned at 12:10.